

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 PN II, INC. dba PULTE HOMES OF NEVADA,
5 *et al.*,

6 Plaintiffs,

7 vs.
8 ASPEN MANUFACTURING, LTD.,

9 Defendant.

2:14-cv-01382-APG-VCF
ORDER DENYING PULTE'S MOTION TO
STRIKE REBUTTAL EXPERTS (ECF No.
30) and GRANTING IN PART ASPEN'S
EMERGENCY MOTION TO EXTEND
DISCOVERY (ECF No. 31)

10 Before the court are Plaintiffs' Motion to Strike Improper Rebuttal Experts (ECF No. 30) and
11 Defendant's Emergency Motion to Extend Discovery (ECF No. 31).

12 Aspen Manufacturing Inc. ("Aspen") designated three rebuttal experts, Dr. Thielen, Dr. Klopp and
13 Dr. Pfaendther. PN II, Inc. ("Pulte") asks that the reports disclosed by Dr. Thielen and Dr. Klopp be
14 stricken and Dr. Pfaendther's report be limited, arguing that the subject reports or portions of a report are
15 not truly rebuttal.

16 According to Pulte, the offending reports offer opinions on issues central to the case, including
17 critical elements of Pulte's case-in-chief and Aspen's affirmative defenses. Pulte claims that it will be
18 prejudiced because it will not have an opportunity to rebut these opinions disclosed by Aspen. Aspen
19 responds that these reports are responsive to Pulte's experts' opinions, explaining, repelling, counteracting
20 or disproving those opinions

21 Discovery is almost completed in this case. All that remains are the depositions of Pulte's experts,
22 and the depositions of Aspen's experts, to the extent their reports are not stricken. Considering the
23 overriding interest that controversies be resolved on the merits and concerns of proportionality, I have
24 decided that the parties should be permitted to obtain deposition testimony from all five experts. As

1 discussed during the October 24, 2016, hearing on Aspen's Emergency Motion to Extend Discovery, each
2 expert's deposition will be limited to a maximum of five hours.

3 Accordingly, IT IS HEREBY ORDERED that Pulte's Motion to Strike Rebuttal Experts (ECF No.
4 30) is DENIED, without prejudice to renewing the issues raised in that motion through a Motion in Limine,
5 based on the entire record developed through the end of discovery.

6 IT IS FURTHER ORDERED that on or before November 22, 2016, Pulte may supplement
7 disclosures by its designated experts to rebut new, alternative or previously unconsidered theories
8 contained in the reports disclosed by Dr. Thielen, Dr. Klopp and Dr. Pfaendther. Expert depositions will
9 be taken between November 28, 2016 and December 9, 2016.

10 IT IS FURTHER ORDERED that Aspen's Emergency Motion to Extend Discovery (ECF No. 31)
11 is GRANTED IN PART as follows:

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13 (1) The only further discovery permitted in this case will be Pulte's Supplemental Expert
14 Disclosures and the five depositions described above, to be completed on or before the stated
15 deadlines;

16 (2) The deadline for the parties to file dispositive motions is extended to January 9, 2017; and
17 (3) The deadline for filing the Joint Pretrial Order is extended until February 10, 2017, or thirty
18 days after the entry of an order or orders deciding all dispositive motions.

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20 DATED this 8th day of November, 2016.

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24 CAM FERENBACH
25 UNITED STATES MAGISTRATE JUDGE